

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Court House,
Boonville, IN
Monday, January 9, 2012, 6:00 P.M.

MEMBERS PRESENT: Guy Gentry, Brad Overton, Marlin Weisheit and Larry Willis.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

MEMBERS ABSENT: Amanda Mosiman, Mike Moesner and Jeff Valiant.

A moment of silence was held followed by the Pledge of Allegiance.

ELECTION OF OFFICERS:

Mrs. Rector called the meeting to order. Roll call was taken and a quorum declared present.

Mrs. Rector stated the first order of business is to elect a President of the Warrick County Area Plan Commission to serve during 2012.

Larry Willis made a motion to elect Guy Gentry as President of the Area Plan Commission for the year 2012.

Brad Overton seconded.

Larry Willis made a motion to close the nominations and Guy Gentry be elected President by acclamation. The motion was seconded by Brad Overton and unanimously carried.

The President stated the next item on the agenda is to elect a Vice-President of the Warrick County Area Plan Commission to serve during 2012.

Marlin Weisheit made a motion to elect Larry Willis as Vice-President. Brad Overton seconded the motion.

Marlin Weisheit made a motion to close the nominations and Larry Willis be elected Vice-President by acclamation. The motion was seconded by Brad Overton and unanimously carried.

APPOINTMENT OF ATTORNEY AND EMPLOYMENT CONTRACT:

Mrs. Rector stated she emailed them a copy of the contract Attorney Doll proposed and asked them to get back with her if they had any changes or additions and no one did so she assumes that it meets everything they wanted. She stated she would like for Attorney Doll to be appointed for a two year period.

Larry Willis made a motion to appoint Morrie Doll attorney for a two year period subject to the salary as stated in the contract. The motion was seconded by Brad Overton and unanimously carried.

SET MEETING DATES, TIME, AND PLACE:

Mrs. Rector stated she recommends the meetings still be held on the 2nd Monday at 6:00 P.M. of each month. She added the only exception will be November which will be the second Tuesday and the meetings will be held in Commissioners Meeting Room, Third Floor, Court House, Boonville, Indiana. She stated these days correspond with the Commissioners meeting dates.

Larry Willis made a motion to hold the meetings on the 2nd Monday of each month at 6:00 P.M. except in November which will be the second Tuesday and the meetings be held in the Commissioners Meeting Room, Third Floor, Court House, Boonville, Indiana. The motion was seconded by Marlin Weisheit and unanimously carried.

ADOPTION OF RULES AND REGULATIONS:

Mrs. Rector stated she didn't think there would be any changes but she wants to make sure since there was some ordinance changes regarding nuisances today and asked if they would continue this until next month.

Larry Willis made a motion to table the adoption of the rules and regulations to the next meeting. The motion was seconded by Marlin Weisheit and unanimously carried.

APPOINTMENT TO THE BOARD OF ZONING APPEALS:

Municipal Representative Appointment

Mrs. Rector stated the Municipal Representative has to be Jeff Valiant since he is the representative from the participating towns of Lynnville, Tennyson and Elberfeld. She stated that Advisory Council appointed him to this Board. She stated he is a new Elberfeld Town Board member and is in Indianapolis for training for newly elected officials and could not attend the meeting this evening.

County Representative Appointment

Mrs. Rector stated the two members that qualify for this appointment are Larry Willis and Mike Moesner and usually Mike Moesner asked to not be appointed because of his farming operation.

Marlin Weisheit made the motion to appoint Jeff Valiant as the Municipal Representative and Larry Willis as the County Representative to the Board of Zoning Appeals. The motion was seconded by Brad Overton and unanimously carried.

APPOINTMENT TO PLAT REVIEW COMMITTEE:

Mrs. Rector stated Guy Gentry has been on the committee since it began and she would like for him to remain on the committee.

Brad Overton made a motion to appoint Guy Gentry to the Plat Review Committee. The motion was seconded by Larry Willis and unanimously carried.

FEE SCHEDULE:

Mrs. Rector stated there are no changes from 2011.

Upon a motion made by Marlin Weisheit and seconded by Guy Gentry, the fee schedule was approved.

ANNUAL REPORT:

Mrs. Rector stated they have all received a copy of the annual report. She stated she issued the same number of permits in 2010 and 2011 but the dollar amount went up because of the commercial permits. She stated the number of residential permits dropped but the average cost of construction went up.

Larry Willis made a motion to accept the annual report as presented. The motion was seconded by Marlin Weisheit and unanimously carried.

MINUTES: Upon a motion made by Marlin Weisheit and seconded by Larry Willis, the Minutes of the last regular meetings held November 14, 2011 and December 12, 2012 were approved as circulated.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-12-01 – A Replat of Lot 1 in Crescent Heights Sec. “A” & part of the NW ¼ Sec. 12, Twp. 6, S, Range 9 W of Ohio Twp. by John P. Herr & Nancy C. Herr. 1.30 acres located on the W side of Russell Road approximately 500’ N of the intersection formed by Russell Rd. (W 675) and Crescent Dr., Ohio Twp. (Complete legal on file.) *Advertised in the Boonville Standard December 29, 2011.*

William Bivins, ACCU Survey was present.

The President called for a staff report.

Mrs. Rector stated Bill Bivins has a recorded power of attorney to represent John and Nancy Herr at this meeting. She said they have submitted all of the return receipts from certified mail of notice to the adjacent property owners and all of the lot owners within Crescent Heights “A” Subdivision. She stated the subject property is zoned A & R-2 and there is no flood plain on the property. She stated this is a one lot subdivision and the County Commissioners ruled that no improvements will be required for Russell Road. She stated the Drainage Board ruled that no additional drainage plans would be required. She stated Chandler has submitted a letter stating that water and sewer is existing on the property. She said the Herrs own Lot 1 in Crescent Heights A and sectional property to the north of Lot 1. She said they have a residence on the sectional property and an unattached garage on Lot 1 and Mr. Herr came into the office a few months ago to add on to the existing garage. She said it was determined the garage was going to be too large for Lot 1 and Attorney Doll advised that since the garage was in a recorded subdivision they would need to combine their sectional property with the lot in order to bring it into compliance and allow them to add on to their garage. She said the ordinance now does not allow an unattached accessory building without a residence in a residential zoning. She said they did this plat to bring the property into compliance and allow them to do the addition and the plat is in technical conformity with the Subdivision Control Ordinance.

Mr. Bivins had nothing to add.

Ascertaining there were no remonstrators present and being no questions from the Board, the President called for a motion.

Larry Willis made a motion to approve PP-12-01. The motion was seconded by Brad Overton and unanimously carried.

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The President stated there are several people in the audience this evening and stated they will alter the published agenda at this time and hear the reason for them being present this evening.

Michael Brady, 215 E. Walnut, Elberfeld, Indiana approached the podium and stated he is present this evening on behalf of the Department of Indiana American Legion to ask this Board's assistance in helping them correct an error that was done a few years back when their property was annexed into Tennyson. He stated the American Legion Post in Tennyson has been in existence for over fifty years and in 1999 they allowed their liquor license to lapse but the post has always been there. Mr. Brady stated they are presently undergoing a revitalization campaign for that post and they have new officers and a new commander who are busting their backs to bring the post back to life. He said they want to build a handicap restroom on to the post and they were told they could not because the land was now zoned residential. He stated they are here this evening to try to correct this and cut through some of the red tape and the American Legion members would appreciate it.

The President asked Mrs. Rector to give the Board some background information.

Mrs. Rector stated a few years ago Tennyson annexed this property. She said the annexation ordinance was prepared by the town's attorney, Mike Phillips. She said the Comprehensive Zoning Ordinance says that any Agriculture and CON zoned property annexed into a corporate boundary shall become zoned "*R-1A*" *until otherwise zoned or classified as to a zoning district. The zoning classification of all other areas annexed shall remain the same.* She said whenever they annexed the American Legion into Tennyson the annexation ordinance didn't specify the area should remain Agriculture or become commercial and so it became residential. She said she and Attorney Doll spoke about this because she didn't know if they could do an amended annexation ordinance.

Attorney Doll stated he doesn't think it could be done now and asked why they just don't rezone the property.

Mrs. Rector stated they were told to rezone the property and they also need a Special Use but they don't want to have to do that. She said they want to add on and so they have to conform to the ordinance. She said they met with the Plat Review Committee and commented they don't have the funds to file the applications but she can't tell them anything other than what the ordinance says.

Discussion ensued over the filing fees for the rezoning and the Special Use. Discussion also ensued over what zoning was needed and the liquor license. It was also discussed if they could be exempt from fees with it being determined they were not.

Mr. Brady pointed out their charter is granted by Congress and no other Veteran Organization can claim that.

Attorney Doll asked what was being added to the building to which Mr. Brady stated they are adding handicapped restrooms.

Mrs. Rector stated another problem is this property is in a flood plain.

Mr. Brady stated that property has never flooded to which Mrs. Rector said they have to go by the maps or have an engineer remove it from the flood plain.

Attorney Doll stated rezoning is the cleanest and fastest for the post but he is also worried about the flood plain. He asked if the building is in the flood plain.

Mrs. Rector stated she didn't know they were coming here this evening and she doesn't have any of the paper work so she can't answer that.

William Bivins, P.E., ACCU Survey stated he would be glad to help out with the site plan and certify to their elevations.

Mrs. Rector stated they were given two applications that were almost completed and suggested they get their paperwork and come to a Site Review meeting on Wednesday. It was determined they would attend the Site Review with Mr. Bivins at 11:15 am.

Mr. Brady stated they appreciate their assistance and help.

Attorney Doll stated they appreciate their service to this country.

PROPOSED ORDINANCE CHANGES:

Building construction (re-construction) after R-O-W taking

Churches requiring a Special Use & required zoning classifications

Height of Accessory Building

Sign Permits:

- (a) Requiring INDOT permit before issuing off premise billboards
- (b) Semi-trailers as billboards

Mrs. Rector stated she and Guy Gentry spoke this afternoon and decided since they didn't have a full Board present this evening these should be continued to next month.

Upon a motion by Brad Overton and seconded by Marlin Weisheit the above proposed changes were continued.

OTHER BUSINESS:

A & B Industrial Subdivision ~ Owners: Allan and Brent Investments, Brent Holweger, Partner and Terminal Properties LLC, Tom Bennett, Partner

Mrs. Rector stated Mr. Holweger brought the plat in however none of the signatures were notarized so now Mr. Biggerstaff is supposed to pick up the plat and get it notarized but at least the plat has been filed

ATTORNEY BUSINESS:

Attorney Doll stated Judge Hendrickson signed the final clean up orders today for the Wolfe properties. He said he mentioned that to the Highway Superintendent in the Drainage Board meeting and he said they would go out Wednesday.

Guy Gentry stated the front yard is so full the Wolfe's have been parking on Elm Street and a school bus hit one of the vehicles. He said Mr. Wolfe got a citation for parking too close to the stop sign.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector stated the County Attorney, Adam Long asked her if she thought there was anything in the zoning ordinance that they could enforce the demolition of houses such as the burned out house in Mansfield Subdivision. She said she told him the only thing that they had was the nuisance and if they take someone to court just a lien is placed on the property. She said the County Highway Department probably doesn't have the expertise to clear a person's property. She stated they would also have to pay disposal fees and then there are probably mortgages on the property. Mrs. Rector stated she knows there are Indiana Codes on unsafe buildings and the Board of Zoning Appeals is the hearing officer for Indiana Code but the County Council would not fund the unsafe building ordinance. She added not to insult the BZA members but they would have to hire a structural engineer because none of them have the expertise to say whether a building was safe or not. Mrs. Rector stated this is going to cost money and she doesn't know why the Commissioners and their Attorney are looking at the Plan Commission instead of adopting something themselves. She said to her if they get a lien put on the property it could be thirty years from now before anyone gets paid. Mrs. Rector questioned how they are going to get anyone to do anything and wait that long to get paid.

Attorney Doll stated the County would have to pay it and then get the lien and then collect the lien. He said the State Unsafe Building Statute has a provision in it that says when a municipality declares a property correctly and holds hearings and has findings and then contracts with someone to tear it down they can go to court and they can get a judgment against the registered land owner. He said that is more than just a lien against the property because you get a blanket judicial ruling against every piece of property they own.

Mrs. Rector stated she thought the Commissioners had the authority through the Building Inspector to have a house declared unsafe and he would take people to court. She stated then the Plan Commission didn't get involved.

Attorney Doll stated it depends on how the Commissioners choose to pass their ordinance as to who is going to hold the hearings etc. He said some cities have the inspectors do it and some have a metropolitan development board. He stated you can be creative how you do it but you can't skip any steps or you will get sued.

Mrs. Rector stated the Commissioners did that a few years ago. She said she thinks they rescinded the ordinance because the County Council wouldn't fund it.

Marlin Weisheit stated the Council hasn't funded it but the Commissioners have the authority to do it. He said they are dealing with the one in Quail Crossing and they are going to remove the house as soon as they get ownership of the property. He said that house has been there for over five years but the homeowners association is working with them and so eventually the County won't be out any money. He said the thing is they don't have any funds but he isn't afraid to start cleaning up houses on the Commissioners level.

Discussion ensued over how close the houses are to each other and the liability of demolishing houses and damaging neighbor's houses.

Marlin Weisheit stated the homeowners in Mansfield are having a meeting tomorrow night and they have signed a petition and want the County to do something.

Attorney Doll stated he can go to court under the nuisance statute and get a court order that says it has to be abated; it has to be no longer in the condition of a nuisance. He said he hasn't seen the property but

from what he is hearing he feels the Judge would sign the order and the County could tear it down. He said the County would have to pay to tear it down.

Mrs. Rector stated there is a mortgage company, an insurance company and people who haven't even yet went to jail for burning the house down.

Marlin Weisheit said they have been charged they haven't been convicted.

Mrs. Rector asked if they still have rights to this house. She said her question is where they want to go with this. She asked if they want to discuss this further; do they want to get into knocking houses down.

Guy Gentry stated he doesn't want to get involved in knocking down houses as the Plan Commission.

Marlin Weisheit said he doesn't either; he thinks the Commissioners should have to deal with it if it comes up on County Government – like they did with Quail Crossing. He said they need to force the homeowners, with whatever legal steps necessary, to clean up their own property. He said there is insurance on this house but if it is crime related the insurance might not pay off.

Attorney Doll stated he can get a court order if he knows who all the parties (insurance, mortgage and owner). He said most of that information can be obtained with a title search for about \$100. He said he can then file suit under the nuisance statute and get a court order to demolish the home; whether they choose to do it or he can get a court order that says the owners of the property have to demolish the home or no longer allow it to stay in the state of a nuisance.

Mrs. Rector stated what are they going to do when a neighbor comes in and says their neighbor's house is falling in and needs to be knocked down.

Attorney Doll stated that is exactly what they were talking about with the difference between a public nuisance and a private nuisance.

Mrs. Rector stated she would think that most houses that are that dilapidated and falling down could classify as a public nuisance because there won't be many that effects only one person.

Attorney Doll that is probably so but clearly a house that is half burned has to be a public nuisance; it has to be unsafe for kids and a health hazard.

Mrs. Rector stated her question is whether the Plan Commission and Commissioners need to meet over this. She said Attorney Long called her and she said she would pass it on because the Board has to make the decision as to whether they want to get involved.

Attorney Doll stated it would seem to him the Commissioners would need to ask the Plan Commission to take legal action as a nuisance and the Board would have decide if it is inclined to do it.

Guy Gentry said he agrees with Commissioner Weisheit and they need to force that private insurance to do their due diligence.

Larry Willis asked if it is still a crime scene or has the fire marshal released it.

Morrie Doll stated those are all valid questions and need to be answered.

Guy Gentry said that is why he hates to declare it a nuisance and go to court until they are sure of all the answers.

Morrie Doll stated one of the things they could do is if a resolution was passed would give him the leverage to then be able to put pressure on the mortgage and insurance holders to clean it up. He said frankly, they would be able to clean it up at a lower cost than the County government could. He said if the Commissioners asked and the Plan Commission passed a resolution to begin to take all the steps necessary and proper to abate the nuisance; including, if necessary, going to court. He said that doesn't mean he will go to court right now, it means he starts writing letters and called mortgage companies and insurance companies saying they have to fix this problem or they are coming after them and get a judgment for the cost too.

Marlin Weisheit said he would like for both of the attorneys get together and come up with a plan.

Morrie Doll said he would be happy to talk to Attorney Long if that is what the Board wants. He stated it may mean the Commissioners formally ask this Board to enforce the zoning ordinance by passing a resolution to take all steps to enforce the ordinance.

Marlin Weisheit said he should talk to Attorney Long and determine who needs to act first.

It was the consensus of the Board for Attorney Doll to speak with Attorney Long.

Marlin Weisheit this way they aren't rushing into anything but at least they have a plan and when people call in they have something they can tell them.

Mrs. Rector stated she doesn't know what mortgage companies do in cases like this because they have a lien on the ground.

Attorney Doll stated while they are on the subject – where there is a dilapidated house in the neighborhood and it has been abandoned for years – there are grant dollars that some municipalities apply for to clean them up and probably the most successful around doing it is the Evansville Metropolitan Development Commission. He said they tear down 12-20 houses a month with grant money. He said it is called their Front Door Project and they are successful in cleaning up blighted areas.

Being no other business the meeting adjourned at 7:15 P.M.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director